

STATE OF WISCONSIN Division of Hearings and Appeals

In the Matter of

DECISION
FCP/146122

PRELIMINARY RECITALS

Pursuant to a petition filed December 26, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on February 21, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner's Family Care/Nursing Home patient liability as \$1,293/month effective November 1, 2012.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services 1 West Wilson Street Madison, Wisconsin 53703

By: Tina Anderson

Milwaukee Enrollment Services 1220 W Vliet St Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES #) is a resident of Milwaukee County.
- 2. The Petitioner has resided at a nursing home since July 22, 2011. His stay was not expected to last longer than 6 months.

- 3. In December, 2011, the Petitioner applied for Institutional Medicaid and was found eligible as of November 1, 2011.
- 4. Petitioner was enrolled in Milwaukee County Family Care effective February 1, 2012.
- 5. On June 13, 2012, the agency gave the Petitioner credit for a life estate for his home. With credit for home maintenance expenses, the Petitioner's patient liability was determined to be \$484.73 from November 1, 2011 February 1, 2012. Effective February 1, 2012, Petitioner's patient liability was \$532.73.
- 6. Effective January 1, 2012, Petitioner's income was \$1,376/month from Social Security Retirement. Effective January 1, 2013, Petitioner's income was \$1,396/month from Social Security Retirement.
- 7. The Petitioner completed a renewal for Family Care benefits on November 6, 2012.
- 8. On November 7, 2012, the agency issued a Notice of Decision informing him that effective November 1, 2012, his patient liability would be \$1,293/month.
- 9. On December 17, 2012, the agency issued a Notice of Decision informing him that effective January 1, 2013, his patient liability would be \$1,313/month.
- 10. Petitioner's Power of Attorney, SB, resides in a home owned by the Petitioner with rights of survivorship in the home. As part of the agreement, the Petitioner is required to pay all of the home maintenance expenses.
- 11. On December 26, 2012, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

After an institutionalized person has been determined eligible for Medicaid, his cost of care must be calculated. Cost of care is the amount he will pay each month to partially offset the cost of his Medicaid services. It is called the patient liability amount when applied to a resident of a medical institution and cost share when applied to a community waivers client. The institutionalized member will be expected to pay their patient liability to the institution that they are residing in as of the first day of the month. Medicaid Eligibility Handbook (MEH) §27.7.1.

The monthly cost to the member is to be calculated as follows:

- 1. For a Medicaid member in a medical institution who does not have a community spouse, subtract the following from the person's monthly income:
 - a. \$65 and ½ earned income disregard An amount not counted when determining a person's total net income.
 - b. Monthly cost for health insurance.
 - c. Support payments.
 - d. Personal needs allowance.
 - e. Home maintenance costs, if applicable. See 15.7.1.

- f. Expenses for establishing and maintaining a court-ordered guardianship or protective placement, including court-ordered attorney and/or guardian fees.
- g. Medical Remedial Expenses.

MEH, § 27.7.1 (Emphasis added).

If an institutionalized person has a home or apartment, the agency is to deduct an amount from his income to allow for maintaining the home or apartment that does not exceed the SSI payment level plus the E supplement for one person (See 39.4.1). The amount is in addition to the personal needs allowance. It should be enough for mortgage, rent, property taxes (including special assessments), home or renters insurance, utilities (heat, water, sewer, electricity), and other incidental costs. MEH, §15.7.1.

The home maintenance deduction may be taken only when a physician certifies (verbally or in writing) that the person is likely to return to the home or apartment within six months, and the person's spouse is not living in the home or apartment. Also, the deduction can be taken for no more than six months. If the member is discharged and re-admitted to an institution, a six month continuance may be granted. MEH, §15.7.1.

In this case, the agency continued to provide a home maintenance deduction for the Petitioner beyond the 6 months allowed by the policy. The agency allowed the deduction for 12 months. When the Petitioner initially entered the hospital and then the nursing home in July, 2011, he was expected to return home. At this point, his POA and physician indicate there is no expectation that he will return home. The only possibility for an additional home maintenance deduction to be applied would be in the event the Petitioner is discharged from the facility and re-admitted. Though the Petitioner has had some periods of hospitalization during 2012, there is no evidence that he has been discharged from nursing home care since July, 2011.

The agency provided its budget screens to demonstrate how it calculated the Petitioner's monthly liability. There is no dispute regarding the Petitioner's income and no dispute regarding the personal needs allowance and medical expense allowance. The Petitioner's POA indicated that she appealed the issue of the home maintenance allowance because she is currently living in the condo and if the Petitioner is unable to contribute toward the home expenses, she will need time to sell the condo. Also, she noted that should he ever return home, the condo would need to be remodeled to accommodate his needs but that remodeling cannot occur without giving him the allowance.

The agency worker noted that the agency is not counting the home as an asset in determining the Petitioner's eligibility and patient liability because the POA has survivorship rights. The agency noted that the POA is not required to sell the home. The agency further noted that because the agency misapplied the home maintenance deduction, it will not seek a recovery of benefits from the Petitioner for its error.

Based on the evidence submitted, I find that the agency properly calculated the Petitioner's patient liability and the Petitioner is no longer entitled to the home maintenance allowance. The Petitioner has received the benefit of the agency's error in allowing the deduction beyond the six months prescribed by the policy manual. The Petitioner's POA requests equitable relief from the policy which I am not authorized to allow.

I note that the Petitioner's representatives can submit evidence of additional medical expenses or other expenses as noted in MEH § 15.7.1 to the agency for consideration in the monthly patient liability.

CONCLUSIONS OF LAW

The agency properly determined the Petitioner's monthly patient liability as \$1,293/month effective November 1, 2012 and \$1,313/month effective January 1, 2013.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee, Wisconsin, this 25th day of March, 2013

\sDebra Bursinger Administrative Law Judge Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 25, 2013.

Milwaukee Enrollment Services Office of Family Care Expansion